IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2007

CORAM

THE HONOURABLE MR.JUSTICE J.A.K.SAMPATH KUMAR

A.S.No.899 OF 1991

Palaniswamy ... Appellant/plaintiff

vs.

Muthuswamy Goundar .. Respondent/Defendant

Appeal filed under Section 96 C.P.C. against the judgment and decree, dated 30.04.1990 made in O.S.No.130 of 1983 on the file of Subordinate Judge, Dharapuram.

For Appellant : Mr.M.V.Krishnan
For Respondent : No appearance

J U D G M E N T

This appeal is against the judgment and decree dated 30.04.1990 in O.S.No.130 of 1983 on the file of Sub-Court, Dharapuram in and by which, the learned Subordinate Judge after analysing the evidence found that the plaintiff is not entitled to the suit claim and accordingly dismissed the suit.

2. For the sake of convenience, the parties are referred to as arrayed in the suit.

3. The plaintiff states as follows :

The suit property is situated in Moolanur Village. The plaintiff married one Nachammal and a female child was born out of the wedlock. The child was aged 8 years at the time of filing of the suit. Due to misunderstanding, the plaintiff and his wife Nachammal are living separately. The minor child Vijyalakshmi is living with her mother, Nachammal.

Because of separation, the wife of the plaintiff was giving trouble to the plaintiff. Taking advantage of this situation, the defendant being a close relative of the plaintiff advised the plaintiff to execute the sale deed in respect of the disputed property in his favour, so that the plaintiff could avoid any litigation, in respect of the said property at a later stage in

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the case of his wife, namely, Nachammal. The plaintiff also believed the advice of the defendant as bona fide. In pursuance of the said advice, the plaintiff executed a sale deed, dated 16.02.1983 in favour of the defendant in respect of the suit property for a value of Rs.16,500/- and the same was registered on 04.03.1983. The possession of the suit property is with the plaintiff even now. In fact, the plaintiff obtained a loan of Rs.5,000/- on 13.07.1979 from the defendant. Similarly, on 16.01.1982, the plaintiff obtained a loan of Rs.5,000/- from one Ramasamy Goundar, S/o.Chidambarasamy Gounder. It was an understanding between the plaintiff and the defendant that the defendant has to discharge the pronote in favour of the said Ramasamy Gounder. It was also the understanding that the pronote in favour of the defendant should be adjusted towards the sale consideration. There was also a recital in the sale agreement that the defendant paid a sum of Rs.6,500/- towards the sale consideration. But the defendant has not paid any amount to the plaintiff as per the recital. The pronote amount was also not discharged so far. Therefore, the said sale deed was without any consideration and therefore, not binding on the plaintiff. Even otherwise, the value of the land as on 04.03.1983 was Rs.50,000/-, whereas the sale consideration was undervalued at Rs.16,500/-. On this ground also, the said sale deed is not binding on the plaintiff. The plaintiff thereafter issued a lawyer's notice to the defendant calling upon him to cancel the sale deed registered on 04.03.1983, as the sale transaction was due to the outcome of undue influence on the part of the defendant. But, there was no reply on the part of the defendant. Hence, the suit.

4. The defendant states as follows :

The plaintiff has been ordered to discharge the family debts necessiated him to sell the suit property. So the defendant negotiated with him to purchase the property for valuable consideration. The debts quoted in the sale deed were favoured for the benefit of the family and in order to discharge them, the plaintiff had to sell the property. So, the defendant is a bonafide purchaser for valuable and proper consideration. Therefore, the plaintiff is not entitled to question the sale deed. Therefore, the suit is liable to be dismissed.

5. The plaintiff examined himself as P.W.1. Mr.Viswanathan was examined as P.W.2 and Mr.Chidamabarasami Gounder were examined as P.W.3. Exs.A1 to A12 were marked on the side of the plaintiff. The defendant was examined as D.W.1. One Mr.Veluchamy was examined as D.W.2. Exs.D1 to D8 were marked on the side of the defendant. The Lower Court after analysing the evidence found that the plaintiff is not entitled to the suit claim and accordingly dismissed the suit. The present appeal is filed by the plaintiff against the said order.

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6. Heard Mr.M.V.Krishnan, learned Counsel appearing for the appellant. On behalf of the respondent, there was no representation.

7. Upon hearing the arguments of the learned Counsel for the appellant, the points which arose for consideration are as follows :

(i) Whether the sale deed is not supported by the consideration ?

(ii) Whether the sale consideration was due to the outcome of undue influence of the defendant ?

(iii) Whether the sale transaction reflect the correct market value of the land ?

Point Nos.1 to 3:

8. It is true that the Sale Deed in respect of the disputed property was effected not only on behalf of the plaintiff, but also on behalf of his minor children. A copy of the sale deed is marked as Ex.A1 and the original sale deed is marked as Ex.B1.

The sale consideration of Rs.16,500/- as per the recital should be adjusted by the defendant in the following manner :

(i) Pronote dated 13.07.1979 for Rs.5,000/- in favour of the defendant to be adjusted towards the sale consideration.

(ii) The pronote dated 16.01.1982 in favour of Chidambara Goundar executed by the plaintiff to be adjusted towards the sale consideration.

(iii) Rs.6,500/- be paid in cash by the defendant

9. The defendant produced the original pronotes dated 13.07.1979 and 16.01.1982, which are marked as Exs.B2 and B3 to prove the compliance of first and second conditions referred above. There is no dispute with regard to the adjustment of the pronote amount with reference to the first condition as stated supra.

10. With regard to the second condition, learned Counsel for the appellant contended that the pronote amount dated 16.01.1982 in favour of Chidambarasamy Goundar, who was examined as P.W.3 was not discharged by the defendant towards sale consideration. The plaintiff also examined P.W.3 in support of his contention. Whereas, the defendant specifically alleges that only after

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discharge of pronote dated 16.01.1982 in favour of P.W.3, he got the original pronote from P.W.3 and filed the same as Ex.B3. Therefore, I have to find out whether there is any truth in the contention of P.W.3.

P.W.3 has not stated that Ex.B3 was stealthily taken away by the defendant from him. He has not given any explanation as to how Ex.B3 has gone to the hands of the defendant. Unless the defendant discharged the pronote amount referred to in Ex.B3, he would not have got the same from P.W.3. In such view of the fact, the evidence of P.W.3 that the amount referred in Ex.B3 was not discharged by the defendant cannot be accepted. The Lower Court also dealt this point without line and negatived the evidence of P.W.3. The finding of Lower Court in this regard is in order.

11. With regard to the third contention, it is the specific case of the defendant that he paid Rs.6,500/- by cash as per the conditions of the sale deed. Whereas the plaintiff submitted that he has not received the cash of Rs.6,500/- from the defendant as per the recital in the sale deed.

The recitals in the sale deed would vouch the case of the defendant. The plaintiff was in possession of a copy of the sale deed and he marked the same as Ex.A1. It is not the case of the plaintiff that he signed the sale deed without knowing the contents of the sale. If that be so, the plaintiff should be aware that as per the sale deed, he received a sum of Rs.6,500/- by cash from the defendant. If he has not received any amount, he ought to have sent a letter to the defendant, demanding him for payment of Rs.6,500/- as per the recital in the sale deed. He has not done so.

In such view of the fact, I am not accepting the contention of the plaintiff that he has not received Rs.6,500/- by cash from the defendant. The Lower Court also negatived the claim of the plaintiff in this regard. Therefore, the finding of the Lower Court does not require any interference. I am satisfied that the sale deed is supported by consideration and therefore, the plaintiff cannot question the same at a later point of time. The Lower Court also rendered a specific finding negativing the claim of the plaintiff. The finding of the Lower Court does not require any interference.

12. It is the specific case of the plaintiff that as per the advice of the defendant, to avoid confrontation with his wife, Nachammal, who is living separately and to save the suit property from any kind of litigation in the hands the hands of his wife Nachammal, he executed the sale deed in favour of the defendant only for name sake.

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13. The defendant specifically confronted the case of the plaintiff and submitted that the suit transaction is valid and the plaintiff executed the sale deed for the amount received. He further submitted that the sale deed is supported by the consideration. As I have already dealt that, the sale deed is supported by consideration, the undue influence theory suggested by the plaintiff will not have any bearing in this case.

14. In this case, the defendant discharged the debts of the plaintiff in the name of P.W.3. The pronotes namely, Exs.B2 and B3 would prove that the plaintiff was indebted at the time of sale consideration. Apart from that, he also received a sum of Rs.6,500/- by cash. Therefore, the case of the plaintiff that the said sale transaction was due to the outcome of undue influence on the part of the defendant cannot be accepted and the same has been invented for the purpose of this case. The Lower Court also dealt this point in detail and rightly negatived the claim of the plaintiff. The finding of the Lower Court is in order and it does not require any interference and hence these points are answered against the plaintiff.

15. At the time of argument, learned Counsel for the appellant/plaintiff would submit that the market value of the land on the date of sale was Rs.55,000/- and that the sale deed was undervalued and therefore, the sale deed is not binding on the plaintiff. If that be so, it is the look out of the registration authority to take necessary action against the defendant. Even otherwise, there is nothing on the part of the plaintiff to show that the market value of the land was Rs.55,000/- on the date of sale deed. If that be so, the contention of the learned Counsel for the appellant/plaintiff cannot be accepted. Therefore, the contention of the learned Counsel for the appellant/plaintiff in this regard is rejected.

16. Learned Counsel for the appellant/plaintiff would contend that since the suit property is an ancestral property, sale deed executed in favour of the plaintiff for himself and on behalf of the minor children is not valid in law and therefore, the sale deed shall not bind on the minors.

17. It is to be noted that the sale deed is supported by consideration. It is also alleged by the defendant that in order to clear the family debts, the plaintiff sold the land in favour of the defendant. So it is proved that the suit property was sold by the plaintiff in favour of the defendant to clear the family debts. Even otherwise, the plaintiff is not entitled to challenge the sale transaction on his own right, as he cannot approbate and reprobate of his own transaction. If at all, there is any

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grievance with regard to the sale transaction as stated by the plaintiff, the affected party would be the children of the plaintiff. The plaintiff on his own accord shall not dispute the sale transaction. According to him, the sale transaction was valid, while executing the sale deed. Now, it is not open to him of his own accord that the sale deed is not valid, as there was no sanction from the competent Court to sell the property on behalf of the minor children also. If the minor children had any grievance over the said sale transaction, they would have challenged the said sale transaction by resorting to Civil Suit, soon after they attained majority. It is not the case of the plaintiff that his children are questioning the validity of the sale transaction, which is under dispute.

18. The suit is of the year 1983. More than 24 years had elapsed. Even if the children of the plaintiff were minor on the date of execution of Ex.B1, by this time, they would have questioned the validity of Ex.B1. They have not done so. It is apparent that the minor children also have lost their right by efflux of time. I am satisfied that there is no merit in the contentions of the learned Counsel for the appellant. Therefore, this contention is rejected.

19. The Lower Court also dealt the facts on hand in detail and found that the claim of the plaintiff is not in order and accordingly rejected the same. I do not find any illegality or impropriety in the finding of the Lower Court. The finding of the Lower Court does not require any interference.

In the result, the appeal fails and accordingly the same is dismissed. However, the parties have to bear their respective cost.

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Asst.Registrar

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To

1. The Subordinate Judge, Dharapuram.
2. The Section Officer, VR Section High Court, Madras.

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